

Appl. No. : 10/031,274
Filed : June 11, 2002

AMENDMENTS TO THE DRAWINGS

Figures 1-5 have been amended as shown on Replacement sheets 1-3 found in the Appendix.

REMARKS

In the Office Action dated August 16, 2010, Claims 18, 19, 29-31 and 34 were rejected, and Claims 20-23 were objected to. Claims 18-34 are pending of which Claims 24-28, 32 and 33 are withdrawn from consideration. By this paper, Applicant has amended Claims 18, 19, 29 and 30. Support for the amendments can be found, for example, at page 3, lines 25-30 and at page 5, line 2, to page 6, line 23, of the specification as filed. Accordingly, no new matter has been added. The amendments for Claims 19 and 30 are for consistency with Claims 18 and 29, respectively, and are not to narrow the claims or overcome the cited art. Applicant respectfully requests entry of the amendments and reconsideration of the application in view of the amendments and the remarks set forth below.

Discussion of Claim Objections

Claims 20-23 were objected to as being dependent upon a rejected base claim. Applicant thanks the Examiner for indicating that these claims would be allowable if rewritten in independent form. In light of the amendments and following remarks, Applicant respectfully requests reconsideration of the rejected base claims and withdrawal of the objections.

Clarification Regarding Figures

The Office Action indicates that the different embodiments of the present invention are described as being shown in Figures 6-8. (Office Action, page 2). Therefore, the Examiner has requested clarification as to whether the structures shown in the other figures are prior art structures. (Office Action, page 2).

In response to the Examiner's request, Applicant has submitted corrected drawings in compliance with 37 CFR 1.121(d) in which Figures 1-5 are labeled as prior art.

Figure 9 is not prior art. As described in the Brief Description of the Drawings, Figure 9 represents the diagram of the current in the rails in the front of the axle according to the invention. (Specification, page 4, line 27-28). As such, Figure 9 is not prior art.

In view of the corrected drawings and the remarks above, Applicant respectfully requests withdrawal of the objection to the drawings.

Discussion of Rejections under 35 U.S.C. § 112, ¶ 2

The Office Action rejected Claims 29-31 and 34 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Examiner has indicated that the two current or voltage discontinuities as described in the specification are produced in association with passing the two tuning blocks instead of passing just one tuning block as recited in Claim 29. Furthermore, the Examiner has indicated that “the first frequency” in Claim 34 lacks antecedent basis, and thus is unclear.

As noted above, Claim 29 has been amended to recite “a generator configured to generate at least two current or voltage discontinuities in a signal generated by the antenna at the first frequency when passing the first and second tuning blocks of the electric joint.” Additionally, Claims 29 has been amended to recite “the first tuning block being configured to be in communication at a first predetermined frequency with an antenna.” Thus, “the first frequency” in Claim 34 has antecedent basis. Accordingly, Applicant requests withdrawal of the rejections.

Discussion of Rejections under 35 U.S.C. § 102(b)

Claims 29-31 and 34 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Anderson (U.S. Pat. No. 4,270,716). Applicant respectfully submits that, as stated in the M.P.E.P. at § 2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987). Further, the elements must be “arranged and combined as required by the claim.” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359 (Fed. Cir. 2008).

The Examiner asserts that Anderson teaches a “track section 102 readable as an electric joint between two track sections 100 and 104.” (Office Action, page 3). Furthermore, the Examiner indicates that the track section 102 includes two tuning blocks, a transmitter operating at the frequency F2, and a transmitter operating at the frequency F3. (Office Action, page 3). Additionally, the Examiner has asserted that the transmitters inherently require “a generator for generating current or voltages to be transmitted by transmitters F2, F3.” (Office Action, page 3).

According to the Examiner, “[s]uch current or voltages are considered to have discontinuities detectable by antenna 116 of vehicle 106 passing the tuning blocks.” (Office Action, page 3).

To clarify the subject matter of Claim 29, Applicant has amended Claim 29 to recite that the first tuning block is “configured to be in communication at a first predetermined frequency with an antenna”, that the second tuning block is “configured to be in communication at a second predetermined frequency with the antenna”, and that the generator is configured to “generate at least two current or voltage discontinuities in a signal generated by the antenna *at the first frequency* when passing the first and second tuning blocks of the electric joint.” (emphasis added). Thus, Claim 29 has been amended to clarify that the at least two current or voltage discontinuities occur in a signal generated by the antenna at the same frequency as the frequency of the tuning signal passing through the first tuning block.

Anderson does not teach the limitation of Claim 29 recited above. Rather, Anderson teaches that the transmitter 112 of the signal block 100 communicates with the receiver 114 at the frequency F3, while the transmitter F2 associated with signal block 102 communicates with the receiver F2 of signal block 100 at a frequency F2. Indeed, Anderson teaches that the “vehicle 106 will electrically prevent the speed command signal from transmitter 112 operative with the occupied signal block 100 from reaching the associated signal receiver 114 for the purpose of detecting a vehicle occupancy within the signal block 100.” (Anderson, col. 2, lines 42-47). Thus, even assuming that the signal block 100 and signal block 102 would each generate a current or voltage discontinuity when the vehicle 106 passes over the track sections associated with signal blocks 100 and 102, the discontinuities would be in signals of different frequencies. In contrast, Claim 29 recites that the generator is configured to “generate at least two current or voltage discontinuities in a signal generated by the antenna at the first frequency when passing the first and second tuning blocks of the electric joint.”

As such, Anderson does not teach or suggest each and every limitation of Claim 29 as amended. Accordingly, Applicant respectfully requests withdrawal of the rejection of Claim 29. Likewise, the dependent Claims 30, 31 and 34 are not anticipated by Anderson for at least the reasons indicate above, in addition to reciting further distinguishing features of particular utility. As such, Applicant respectfully requests withdrawal of the rejections.

Discussion of Rejection under 35 U.S.C. § 103(a)

Claims 18, 19 and 29 have been rejected under 35 U.S.C. § 103(a) as being obvious over Anderson in view of the prior art described in the Description of the Related Art of the instant specification. (Office Action, page 5).

Applicant respectfully submits that, as stated in the M.P.E.P. at § 2143, “The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art.” *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007) (emphasis added). Applicant further submits that “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *Id.* at 418. Rather, as stated in the M.P.E.P. at § 2143.01, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* at 419 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Neither Anderson nor Applicant’s admitted prior art, alone or in combination, teaches each and every element of independent Claims 18 and 29. Thus, the combination of references does not render the claims obvious.

For example, Claim 18 has been amended to recite “detecting a first discontinuity in a current or voltage of a signal generated by the antenna at a first predetermined frequency when the vehicle passes a first tuning block of an electric joint configured to operate at the same first frequency” and “detecting a second discontinuity in a current or voltage of a signal generated by the antenna at the same first frequency when the vehicle passes a second tuning block of the electric joint configured to operate at a second predetermined frequency.” Thus, Claim 18 has been amended to clarify that the at least two current or voltage discontinuities occur in a signal generated by the antenna at the same frequency as the frequency of the tuning signal passing through the first tuning block.

In contrast, as described above, even assuming that the signal block 100 and signal block 102 of Anderson would each generate a current or voltage discontinuity when the vehicle 106 passes over the track sections associated with signal blocks 100 and 102, the discontinuities would be in signals of different frequencies. Accordingly, Anderson does not teach or suggest

each and every limitation of Claim 18 as amended. Likewise, the prior art described in the Description of the Related Art of the instant specification does not teach such a limitation. Indeed, none of the cited art, alone or in combination, teaches each and every element of Claim 18 as amended. As such, Applicant respectfully requests withdrawal of the rejection.

Claim 29 is also not obvious in view of Anderson and Applicant's admitted prior art for similar reasons. The dependent claims are also not obviated by the cited art for at least the reasons indicate above, in addition to reciting further distinguishing features of particular utility. As such, Applicant respectfully requests withdrawal of the rejections.

Discussion of Dependent Claims

Although Applicant has not addressed all the issues of the dependent claims, Applicant respectfully submits that Applicant does not necessarily agree with the characterization and assessments of the dependent claims made by the Examiner, and Applicant believes that each claim is patentable on its own merits. Claims 19-23, 30-31 and 34 are dependent either directly or indirectly on one of the above-discussed independent claims. Applicant respectfully submits that pursuant to 35 U.S.C. § 112, ¶4, the dependent claims incorporate by reference all the features of the claim to which they refer and include their own patentable features, and are therefore in condition for allowance. Therefore, Applicant respectfully requests the withdrawal of all claim rejections and prompt allowance of the claims.

No Disclaimers or Disavowals

Although the present communication includes alterations to the claims, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Summary

Applicant respectfully submits that the pending claims are in condition for allowance. Applicant respectfully requests that the Examiner grant allowance of the present application. The Examiner is invited to contact the undersigned via telephone if such communication would expedite the allowance of this application.

While Applicant believes that no additional fees are due in connection with this application, Applicant respectfully requests that Deposit Account No. 11-1410 be charged for any fees deemed owed during the pendency of this application, excluding the issue fee.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 11-23-2010

By: Raimond J. Saleniks

Raimond J. Saleniks
Registration No. 37,924
Agent of Record
Customer No. 20,995
(858) 836-9000

10002879
111210